

## **Section 1341 - Physical Culture and Health Services and Clubs**

**1341.01 Definitions.** Unless the context otherwise clearly indicates, the following terms shall have the stated meanings:

**Escort Service.** Any business which provides male or female accompaniment services to its customers for a fee or other valuable consideration.

**Massage.** The rubbing, pressing, stroking, kneading, tapping, rolling, pounding, vibrating, or stimulating the superficial parts of the human body with the hands or any instrument by a person who is not duly licensed by the State to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry.

**"Physical Culture and Health Services," "Physical Culture and Health Club," "Reducing Club," "Reducing Salon," "Massage Parlor."** Any building, room, structure, place, or establishment used by the public other than a hospital, sanitarium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings, duly licensed under the provisions of M.S. 144.50 through 144.703, inclusive, where non-medical and non-surgical manipulative exercises or massages are practiced upon the human body for a fee or other valuable consideration by anyone not duly licensed by the State to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry, with or without the use of mechanical, therapeutic, or bathing devices.

**Sauna Parlor.** An establishment or business the principal use of which is the provision of a room or rooms used by the public for bathing, relaxing or reducing purposes utilizing steam or hot air as a cleaning, relaxing or reducing agent.

### **1341.02 Business License Required.**

**Subd. 1 Requiring License and Defining Businesses Operating within City.** No person, partnership, corporation, or other organization shall operate a physical culture and health service or club, reducing club or salon, sauna parlor, massage parlor, or escort service within the City, either exclusively or in connection with any other operation or enterprise, unless such business is currently licensed under this Section. A business is operating within the City, regardless of whether the business premises are actually located within the corporate limits of the City, if the business premises serve as a point of assignment for employees who perform escort services within the corporate limits of the City, including, but not limited to, telephone referral business.

#### **Subd. 2 Certain Businesses Exempt.**

A. The preceding provisions of this Section notwithstanding, no business license shall be required for a business establishment which offers massage as an accessory use if it meets all of the following criteria as evidenced by affidavits and other

documents submitted to and in form and substance reasonably acceptable to the Clerk:

1. The principal activity of the business shall not be a massage parlor, sauna parlor, or escort service;
  2. The annual gross revenue of the business from performing massage is less than 25% of the total annual gross revenue of the business as shown by financial statements or an affidavit signed by the authorized Officer of the business. In lieu of delivery of the aforementioned affidavit, at the direction of the City, the business shall be required to deliver, a certification from a certified public accountant, acceptable to the Manager, that the annual gross revenue from massage services, for the preceding twelve months, is less than 25% of its total annual gross revenue for such period of time.
  3. The room or rooms where massage is performed shall not have an exclusive entrance from or exit to the exterior of the building in which the principal business is located or to a public concourse or public lobby. Notwithstanding the foregoing, massage may be performed by an individual at the residence of the person receiving the massage.
  4. All fees or other consideration derived from performing massage shall be received by and accounted for by the proprietor of the principal business.
  5. All individuals performing massage in connection with the business shall be employees of the principal business or shall be independent contractors or agents who perform massage pursuant to a written agreement with the owner of the principal business.
- B. Any business that requests an exemption from the business license requirement shall submit the required affidavits and documents on an annual basis. The exemption request shall be due on or before the first day of June of each year.

**1341.03 License Application and Procedures.** Every application for a license under this Section shall be made on a form supplied by the Clerk and shall be filed with the Clerk. The provisions of Section 160 of this Code shall apply to all licenses required by this Section and to the holders of such licenses. In addition to the information required by Section 160 of this Code, the application for a license under this Section shall contain the following information. Failure to complete or supply such information may cause a license to be denied.

A. Whether the applicant is a natural person, a partnership, a corporation, or other form of organization.

B. If the applicant is a natural person:

1. The true name, place and date of birth, current address and telephone number of the applicant.

2. Whether the applicant has ever used or has been known by a name other than the applicant's true name; and if so, such name or names and information concerning dates and places where used.
3. A specific statement as to the type and nature of the business to be licensed.
4. The name of the business, if it is to be conducted under a name other than the full individual name of the applicant, in which case a certified copy of the certification required by M.S. Chapter 333, shall be attached to the application.
5. The addresses at which the applicant has lived during the previous five years, including a statement of how long the applicant has been continuously a resident of the State during the period as of and immediately preceding the date of application.
6. The kind, name and location of every business or occupation in which the applicant has been engaged during the preceding five years.
7. The names and addresses of the applicant's employer(s) and partner(s), if any, who were such at any time during the preceding five years.
8. Whether the applicant has ever been convicted of any felony, crime, or violation of any provisions of this Code or State Law other than traffic violations and, if so, information as to the time, place and offense for which convictions were had.

C. If the applicant is a partnership:

1. The names and addresses of all partners and all information concerning each partner as is required of an applicant under paragraph B. of this Subsection.
2. The names(s) of the managing partner(s), and the interest of each partner in the business.
3. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to trade name under the provisions of M.S. Chapter 333, a certified copy of such certification shall also be attached.

D. If the applicant is a corporation or other organization.

1. The name of the applicant, and if incorporated, the state of incorporation.

2. A true Certificate of Good Standing, dated as of a current date, and true copies of the Articles of Incorporation or Association Agreement and Bylaws shall be attached to the application. If a foreign corporation, a Certificate of Authority issued pursuant to M.S. Chapter 303, shall also be attached.

3. The name of the person(s) who is to manage the business and all information concerning the person(s) as is required of an applicant under paragraph B. of this Subsection.

4. The names of all officers, directors and persons who control or own an interest in excess of 5% in such corporation or organization and all information concerning the persons as is required of an applicant under paragraph B. of this Subsection.

E. The location of the business premises.

F. Whether the applicant is licensed in other communities or has had a license revoked, or has been denied a license, to conduct any of the activities required to be licensed hereunder; and if so, when and where the applicant is or was so licensed, has had a license revoked or has been denied a license.

G. The names and addresses of those individuals to be employed by the applicant and who may work within the City.

H. The names, residences and business addresses of three residents of the County, not related to the applicant or financially interested in the business to be licensed, who may be referred to by the City for information as to the applicant's character. If the applicant is a partnership, three such names shall be supplied for each partner, and if the applicant is a corporation or other organization, three such names shall be supplied for each officer of the applicant and each manager of the business.

I. The amount of capital investment to be made by the applicant in the premises described in the application to operate the business to be licensed. Capital investment shall mean the amount of money that the applicant actually invests to acquire, refurbish, repair, remodel, or furnish the premises, including moneys invested to comply with Subsection 1341.14. This paragraph shall not apply to any applicant for a license to operate only an escort service.

J. A financial statement, certified as being true and correct by an independent accountant, showing the gross income of the business to be licensed for the last three fiscal years of such business, or shorter period of time that the applicant may have been in the business to be licensed, itemized as to each activity of the business including, without limitation, the gross income from performing massage.

**1341.04 Execution of Application.** All applications for any license under this Section shall be signed and verified by the oath of the applicant. If the application is that of a natural person, it shall be signed and verified by such person; if by a partnership, by all the partners; if by a corporation, by two of its officers, and if by an unincorporated association, by its manager or managing officer. Any falsification of information on any license application shall result in the denial of the license applied for, and shall constitute adequate grounds for the suspension or revocation of any license issued to the applicant.

**1341.05 License and Investigation Fees.**

Subd. 1 **License Fee.** Each application for a license or renewal license shall be accompanied by payment in full of the required license fee. The fee for a business license shall be as set forth in Section 185 of this Code. Upon rejection of any application for a license, the Clerk shall refund the amount paid.

Subd. 2 **Investigation Fee.** At the time of each original application for a business license, the applicant shall deposit an investigation fee as set forth in Section 185 of this Code. The cost of the investigation will be based on the expense involved. All deposit monies not expended on the investigation will be refunded to the applicant.

**1341.06 Investigation.** All applications shall be referred by the Clerk to the Police Department and to such other City departments for investigation of the applicant's character and verification of the facts set forth in the application. Within 60 days after the application date, the Police Chief and any other consultants shall submit a written recommendation to the Manager as to issuance or non-issuance of the license, setting forth the facts upon which the recommendation is based.

**1341.07 Approval or Denial of Application.** Within 90 days after the application date, the Manager shall either approve or deny the application and shall notify the Clerk in writing of the decision. If the application is approved, the Clerk shall issue the license. If the application is denied, the Clerk shall furnish written notice of the denial to the applicant, together with the reason or reasons for denial. In addition to the reasons set forth in Subsection 160.04 of this Code a license may also be denied for any of the following reasons:

Subd. 1 **Under Legal Age.** If an individual applicant is under the age of 18.

Subd. 2 **Convictions.** If the applicant, or any officers, managers, directors, shareholders or owners, if a corporation or association, or any partners, if a partnership, has been convicted of a felony, or has been convicted of any illegal conduct involving moral turpitude, dishonesty, fraud, deceit or misrepresentation.

Subd. 3 **Conviction without Sufficient Rehabilitation.** If the applicant, or any principal officers, managers, directors, shareholders or owners, if a corporation or association, or any partners, if a partnership, has been convicted of any crime or crimes directly relating to the occupation of massage and escort services, as provided in M.S. 364.03, Subd. 2, and has not shown competent evidence of sufficient rehabilitation and

present fitness to perform the duties of the occupation of massage or escort services, as provided in M.S. 364.03, Subd. 3.

**Subd. 4 Prior Denial of License.** If the applicant, or any principal officers, managers, directors, shareholders or owners, if a corporation or association, or any partners, if a partnership, has within one year prior to the date of application been denied a license under this Section, or any similar ordinance of any municipality within the State, or within the period has had revoked any license issued under this Section, or any similar ordinance of any municipality within the State.

**Subd. 5 Zoning Restriction.** If the business to be licensed is not permitted by Section 850 of this Code upon the premises described in the application.

**Subd. 6 Failure to Meet Construction Requirements.** If the premises described in the application for a business license fail to comply with the requirements of Subsection 1341.14.

**Subd. 7 Capital Investment Less than \$10,000.** If the applicant's planned capital investment in the premises described in the application to operate the business to be licensed is less than \$10,000. This paragraph shall not apply to any license application to operate only an escort service.

**1341.08 Renewal Application.** Not less than 30 nor more than 60 days before the expiration of any license issued pursuant to this Section, any license holder desiring to renew the license shall submit a written application to the Clerk on forms provided by the City together with payment in full of the license fee as required for the original license. The renewal application shall be forwarded to the Manager who shall, within 30 days after the renewal application date, either approve or deny the application and shall notify the Clerk in writing of the decision. The Clerk shall then issue the license or, in case of denial, notify the applicant in writing of the denial setting forth the reason or reasons therefor.

**1341.09 Appeal to Council.** Any applicant may appeal the denial of a license or a license renewal by filing a written notice of appeal to the Council in the Clerk's office within 10 days after the denial. The Council shall hear the appeal within 60 days after the notice is filed, and opportunity shall be given to any person to be heard in favor of or opposing the issuance or renewal of the license. The Council may order and conduct such additional investigation as it deems necessary. Any licensee is authorized to continue to operate until final action by the Council upon licensee's renewal application, unless prohibited by Council resolution made after the denial.

**1341.10 License Not Transferable; Duration.** Each license shall be issued to the applicant only and shall not be transferable to another holder. Any change in the persons named as partners on the application, as required by paragraph C.1 of Subsection 1341.03 and any change in the persons who are named in the application as required by paragraph D.4 of Subsection 1341.03 shall be deemed a transfer for purposes of this Section. If the licensee is a limited partnership, a change in the limited partners of less than 25% cumulatively over the license period shall not be deemed a transfer. The change in or addition of a vice-president, secretary, or

treasurer of a corporate licensee shall not be deemed a transfer. All licenses issued pursuant to this Section shall be effective from July 1 through June 30.

**1341.11 Suspension or Revocation of License.** The Council may suspend for any period not exceeding 60 days, or revoke, any license issued pursuant to this Section upon finding a violation of any provision of this Section or upon violation of any other provision of this Code or State Law or regulation affecting the activities covered by this Section. Any conviction for prostitution or any other crime or violation involving moral turpitude shall result in the revocation of any license issued under this Section. Except in the case of a suspension pending a hearing on revocation, revocation or suspension by the Council shall be preceded by written notice to the licensee of a hearing. The notice may be served upon the licensee personally or by mailing it to the business or residence address set forth in the application or on file with the Clerk. The notice shall give at least ten days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The Council may, without notice, suspend any license pending a hearing on revocation for a period not exceeding 30 days.

**1341.12 Hours of Operation.** No business licensed under this Section shall be open for business, nor shall any persons or customers be permitted on the premises, between the hours of 10:00 P.M. and 7:00 A.M.

**1341.13 Restrictions and Regulations.**

Subd. 1 **Notice of Change in Management.** The individual designated by a partnership or a corporation in its business license application to be manager and in responsible charge of the business shall remain responsible for the conduct of the business until another suitable person has been designated in writing by the license holder. The license holder shall promptly give the Police Department written notice of any such change indicating the name and address of the new manager and the effective date of the change.

Subd. 2 **Clothing Requirements.** Employees of businesses licensed under this section shall be and shall remain fully clothed while performing massage.

Subd. 3 **Location of Services.** No person shall perform a massage for a fee or other consideration at any place other than (i) a physical culture and health service, physical culture or health club, reducing salon, sauna parlor, or massage parlor that has been duly licensed pursuant to Subd. 2 of Subsection 1341.02, (ii) a business which is exempt from a business license pursuant to Subd. 3 of Subsection 1341.02, or (iii) the residence of the person receiving the massage.

Subd. 4 **No Services Allowed by Sexually Oriented Businesses.** No person shall perform a massage for a fee or other consideration in connection with a Sexually Oriented Business as defined by Subsection 850.03 of this Code.

**1341.14 Construction Requirements.** No business license shall be issued under this Section for other than an escort service unless the premises used for the operation shall comply with the following requirements:

Subd. 1 **Requirements for Steam or Hot Air Rooms.** All rooms utilizing steam or hot air as a cleaning, relaxing or reducing agent, and all restrooms, changing rooms and bathrooms used in connection with such rooms, shall be constructed with materials impervious to moisture, bacteria, mold and fungus growth. Floor-to-wall and wall-to-wall joints shall be constructed so as to provide a sanitary cove with a minimum radius of 3/8 inch.

Subd. 2 **Public Restroom Requirements.** All public restrooms shall be provided with mechanical ventilation with 2 cfm (cubic feet per minute) per square foot area, a minimum of 15 foot candles of illumination, a hand washing sink equipped with hot and cold running water under pressure, sanitary towels with dispensers and soap with dispensers.

Subd. 3 **Requirements for Janitor's Closet.** Each such operation shall have a janitor's closet for the storage of cleaning supplies with a mop sink, mechanical ventilation with 2 cfm per square foot area and a minimum of 15 footcandles of illumination.

Subd. 4 **Lockers.** Individual lockers shall be provided for use by customers and shall have separate keys for locking.

#### **1341.15 Maintenance; Sanitary Conditions; Communicable Disease.**

Subd. 1 **Clean and Sanitary Business.** All businesses licensed under this Section at all times shall be kept in a clean and sanitary condition.

Subd. 2 **Clean and Sanitary Instruments.** All instruments and mechanical, therapeutic, and bathing devices or parts that come into contact with the human body at all times shall be kept clean and sanitary.

Subd. 3 **Towels and Linens.** No towels and linens furnished for use by one patron shall be furnished for use by another until thoroughly laundered.

Subd. 4 **Hand Washing.** All individuals who practice massage shall wash their hands before each massage.

Subd. 5 **Communicable Disease.** No person suffering from a communicable disease shall work or be employed in a licensed business. No person suffering from a communicable disease to the knowledge of the owner, custodian, or employees of a licensed business shall be accommodated as a patron.

**1341.16 Inspection.** Each business required to be licensed shall at all times be held open for inspection by duly authorized representatives of the City.

**1341.17 Barber Shops and Beauty Salons Exempted.** Barber shops and beauty salons which do not give, or hold themselves out to give, massages, other than are customarily given in



such shops and salons for the purpose of facial beautification only shall not be subject to the provisions of this Section.

*History: Ord 1353 adopted 1-17-79; amended 1353-A1 11-28-84; 1353-A2 7-16-86; Ord 1352 repealed 11-28-84; Ord 1994-5 5-4-94; Ord 2001-1, 2-1-00 replaced 1340 with 1341; Ord 2006-11, 12-05-06*

*Reference: M.S. 144.50 through 144.703, 333, 364.03, Subd. 2, 136C*

*Cross Reference: Sections 160, 185, 850*